flows from one network to the other. Ideally, this sharing would be in proportion to the benefits that interconnection generates for the respective sets of subscribers. It would, however, be impractical to measure these benefits, which vary consumer by consumer. In light of the fact that LEC networks have a greater number of subscribers, each of whom likely benefits by less than a corresponding CMRS subscriber, a reasonable compromise is to split the costs of dedicated facilities equally. Hence, the costs of dedicated facilities should be shared between LECs and CMRS providers.

D. Evaluation of Alternative Pricing Options

In addition to seeking comment on the proposals above, the NPRM seeks comments on several options, including: (1) bill and keep off-peak only; (2) subset of access charges; (3) existing interconnection arrangements between LECs and cellular carriers; (4) intrastate interconnection arrangements between LECs and new entrants; (5) measured local service rates; and (6) existing interconnection arrangements between neighboring LECs. The analysis of the present section shows that adoption of any arrangement other than bill and keep will needlessly increase transactions costs and slow the growth of the CMRS industry, particularly as an economically viable competitor to wireline local loop.

1. Bill and Keep for Off-Peak Only

Bill and keep for off-peak only is not the optimal interim policy. While it uses the economically efficient prices off-peak, the need to determine peak rates

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whose switch the NXX is assigned to cover the cost of programming the LECs' switches to support the new wireless NXX. Most LECs, of course, refuse to compensate CMRS carriers for reprogramming their switches to support new NXXs assigned to wireline switches.

and then implement a verifiable billing system for collecting these charges will eliminate the administrative simplicity of bill and keep, thus slowing the development of CMRS competition and triggering significant transactions costs for both policy makers and private parties.

There are several reasons why this approach is inferior to the use of full bill and keep as an interim policy.

Setting peak periods prices will be a costly and time consuming process. If the Commission moves away from full bill and keep, it will have to come up with a basis for peak-load pricing. This will be difficult and time consuming given the lack of any record evidence on peak-period costs. For that matter, there is no consensus on what constitutes the appropriate peak period for billing purposes.

It will be costly and difficult to identify peaks. There are several potential difficulties with identifying the peak traffic periods.

- *Shifting Peaks:* Peak-load pricing is made more difficult by the fact that the peak itself depends on the prices that consumers face. Thus, implementing a peak-load pricing system might actually shift the peak. Consequently, rates would then have to be rebalanced.
- *Load Management:* The shifting peak problem reflects the fact that consumers respond to retail price incentives or signals. This, in turn, points out that the LECs can manage the timing of their traffic flows. With sufficient retail price or interexchange access charge incentives, LECs might be able to flatten their traffic flows over a very large part of the day. By

spreading the traffic and broadening the peak, the per-minute cost of peak traffic would be greatly reduced.

- *Facility-Dependent Peaks:* The peak time varies by switch, facility, and day. Thus, a full peak-load pricing system would have to be implemented at the switch level. This would be a complex undertaking. To be accountable, it would require LECs to reveal and verify their traffic patterns in considerable detail. Because of the impracticability of measuring and administering such a switch-dependent system, policy makers might adopt a pricing scheme that does not attempt to mirror the full complexity of the underlying congestion patterns. Doing so, of course, diminishes the ability of prices to provide proper signals to users. At that point, one must ask whether it is worth the complexity and cost inherent in the administration of any scheme for the peak-load pricing of interconnection.

It will be costly and difficult to implement peak load pricing systems. At present, LEC's generally refuse to provide detailed billing system information for CMRS providers. It does not provide breakdowns by time of day or by switch. While the LECs have detailed information on traffic flows, this information is not integrated into the LEC CMRS billing system. In light of LEC refusal to provide such detail it appears that the cost to modify the billing system to implement peak-load pricing would be a major effort both in terms of money and, more important, time.

Complicated peak load pricing structures will not affect retail rates, so such peak-load pricing will have no efficiency benefits. In light of the complex nature of traffic

peaks within the LEC network, a meaningful peak-load pricing system would have to be fairly complex. While such complexity might be manageable in a carrier-to-carrier relationship, it would not be sustainable in a retail marketing relationship. Simply put, CMRS providers will not find it commercially viable to have complex retail rate structures mirroring the underlying pattern of LEC facility usage. But when retail prices do not reflect the underlying wholesale peak-load charges, there is no effect on consumption patterns. Hence, despite incurring the costs of putting a complex tracking and billing mechanism in place, there would be no consumption efficiency benefits.

It would be more efficient to implement peak-load pricing for local service or interexchange access rather than LEC-CMRS interconnection. For the near future, the volume of LEC-CMRS traffic will be extremely small relative to that of either interexchange access or local service. Hence, any potential improvements in network efficiency from load management of LEC-CMRS interconnection would be dwarfed by the potential gains from peak-load pricing in either local service rates or interexchange access charges. While peak-load pricing for all types of interconnection may be the appropriate long-term policy and should be considered by the Commission in its review of interstate access charges, it would be unwise to experiment with LEC-CMRS interconnection at this critical point in the industry's development.

2. Subset of Access Charges

The NPRM also raised the possibility of basing interconnection rates on a subset of current interexchange access charges. This part analyzes the appropriateness of

existing access charges and demonstrates that even a subset of existing access charges would result in inefficiently high LEC-CMRS access charges.

There are three ways that an interstate, interexchange carrier can connect with a LEC end office under the current structure. The carrier can provide its own transport to the LEC end office, in which case it is subject to collocation charges and the transport interconnection charge. Alternatively, the carrier can purchase either direct-trunked transport or tandem-switched transport from the LEC. In either case, the carrier pays for entrance facilities, interoffice transport, and the transport interconnection charge. In all three cases, the interexchange carrier then pays local switching charges and the carrier common line (CCL) charge to the LEC for terminating its traffic with end users.

Entrance Facilities: Entrance facilities to a LEC network are also priced in such a way as to create higher charges and/or inefficient routing of traffic. LECs require cellular companies to pay for facilities used from the cellular point of connection all the way to the LEC End Office. See Appendix B, p. 6. A more appropriate definition would require cellular carriers to pay for only those facilities needed to reach the nearest LEC facility, such as a manhole access point. Such an arrangement is known as "meet-point billing" where each carrier pays for the costs of the facilities to reach each other. This is how LECs coordinate the exchange of traffic between themselves. See Appendix B, p. 3.

The rates imposed by the LECs for carrying the calls all the way to the End Office are distance sensitive charges, set in a fixed monthly fee, in addition to usage charges. Because cellular carriers have no say about where they want to interconnect with a LEC, they are forced to locate cell sites near an End Office to avoid the high monthly charges,

and to backhaul traffic to the MTSO. This forces inefficient network design on all wireless carriers and increases costs. In Los Angeles, AirTouch Type 2B connections, allowing direct connection at an end-office only to lines in that end-office switch, require dedicated facilities priced at $21.00 per mile.

The best approach to pricing is for the LEC and CMRS provider to be viewed as co-carriers. Hence, the Commission should adopt a cost sharing model in which the two parties split the costs of the facilities. And, as discussed above, overhead costs should not be included in the cost sharing. The current rates, however, ultimately derive from pre-price cap pricing based on rate-of-return driven fully allocated costs. For these reasons, it would be inappropriate to make CMRS providers purchase entrance facilities on the terms that interexchange carriers do today.

Direct-Trunked Transport Charges. These charges cover dedicated facilities whose costs are appropriately recovered through flat-rate charges. As with entrance facilities, current access charges would be too high for LEC-CMRS interconnection because of the failure to share the costs between the two carriers and the inclusion of overhead loadings.

Tandem-Switched Transport Charges. To the extent that dedicated facilities are used in the provision of tandem-switched transport, the same analysis as that applied to entrance facilities and dedicated transport is applicable here. Turning to shared facilities, the possibility of congestion leads to traffic-sensitive costs. Consider tandem switching. The congestion, or capacity, costs arise from the fact that high traffic volumes (relative to the capacity of the switch) lead to slower call processing. Off-peak, the incremental

tandem switching costs of LEC-CMRS interconnection are essentially nil, and the appropriate charge is zero. In setting any peak-period charges, it is important to exclude overheads so that the charges do not exceed long-run incremental costs. Lastly, it should be noted that these charges are geographically averaged. If one takes the view that bill and keep does not mirror the underlying pattern of costs in sufficient detail, then one should also conclude that tandem switching charges must be deaveraged, particularly if peak periods vary across tandems. Geographically averaged costs may provide no more accurate pricing signals than does bill and keep. In light of the difficulties of deaveraging and the transactions costs, bill and keep is a preferable policy.

Collocation Charges. Where the CMRS provider interconnects directly to the LEC end office, there are non-traffic sensitive costs of the trunk-side connection to the LEC switch. These costs should be treated like any other dedicated facility costs of interconnection: they should be split between the LEC and the CMRS provider, and overhead loadings should not be included. Collocation charges would have to be adjusted downward to serve as an appropriate basis for LEC-CMRS interconnection charges.

Transport Interconnection Charge (TIC). In the NPRM, the Commission correctly indicates that the TIC should not be included in LEC-CMRS interconnection charges. Rather than reflecting any sort of cost causation, this charge is a residual amount that was designed to ensure the revenue neutrality of the restructuring of transport rates. Thus, there is no cost-causative basis for including this charge in LEC-CMRS interconnection rates. Moreover, broadening the base of TIC recovery to include CMRS providers

without adjusting the rate downward (including the rate charged to interexchange carriers) would result in the LECs' over-recovering the subsidy revenues or overheads that the TIC was designed to capture. The TIC needs to be reformed in an access charge proceeding rather than extended to LEC-CMRS interconnection.

Local Switching Charges. For a variety of reasons, current local switching charges overstate incremental costs and are inappropriately high to serve as the basis of LEC-CMRS interconnection rates. As with tandem switches, there are the congestion costs associated with the fact that high traffic volumes lead to slower call processing. These costs are zero in off-peak periods.

The traffic-sensitive local switching costs of peak-period LEC-CMRS interconnection are measured by the costs of upgrading the switch to meet peak-period traffic volume. In assessing the costs of switch upgrades, it is important to exclude costs that are driven by other factors. The Commission must take into account the fact that switch upgrades are driven by the need to increase calling capacity, the number of access lines, the availability of new calling features, and reductions in maintenance and operations costs. Calling volume is just one driver of upgrades and capacity expansion, and interconnection should not be priced as if it is the sole reason.[23] For example, line card expenses are set-up costs associated with connection of a particular subscriber to the PSTN. Thus, to the extent that current local switching charges recover line card and other

[23] The expense of upgrading switch processor capacity is the principal cost of upgrading local switches to meet the demands of peak-period traffic flows. Even here, however, processor upgrades are driven by factors other than purely traffic volume, including technological change that leads to new processors with lower operating and maintenance costs, as well as the ability to offer new services. These offsetting benefits need to be netted out in calculating the costs of a processor upgrade ostensibly triggered by increases in peak-period traffic.

line-side expenses, they are improperly recovering non-traffic-sensitive costs through traffic-sensitive charges. Moreover, they are recovering these costs from the wrong parties. Line card expenses are most appropriately recovered from the subscribers whose decisions trigger them.

The current local switching costs are based on fully distributed costs. By including recovery of overheads, these charges exceed long-run incremental costs. In addition, when switching is subject to economies of scale, marginal or incremental costs will be lower than average costs. Hence, use of rates derived from fully distributed costs will exceed incremental costs even if one adjusts the rates downward by removing corporate overheads and other effects due to economies of scope. Thus, use of local switching charges would result in inefficiently high LEC-CMRS interconnection charges.

Lastly, current local switching charges are geographically averaged, which distorts incentives as discussed in the analysis of tandem switching charges. Again, averaged rates may provide no better signals than bill and keep. And deaveraged rates would generate much higher transactions costs.

Carrier Common Line Charge. In the NPRM, the Commission correctly concludes that the CCL charge should not be included in LEC-CMRS interconnection charges. The CCL charge does not reflect principles of cost causation. Inclusion of the CCL charge would artificially raise prices to CMRS providers, violating competitive neutrality and damaging the prospects for meaningful wireless local loop competition. Moreover, broadening the base of CCL charge recovery without adjusting the rate downward for all

carriers on whom it is levied would result in the LECs' over-recovering subsidy revenues to subscriber loop facilities.

3. Existing Interconnection Arrangements Between LECs and Cellular Carriers

Existing interconnection arrangements between LECs and cellular carriers embody pricing schemes that violate fundamental principles of cost-causative pricing. Moreover, they stifle realization of the Commission's goals. Current LEC-cellular interconnection agreements embody rates that are inefficiently high, inefficiently structured, and discriminatory.

As detailed in the attached Appendix A, BellSouth Telecommunications has consistently demanded that cellular carriers accept interconnection terms that do not take into account differences in traffic flows (as measured by volume, geographic distribution, and temporal distribution). Clearly, these rates are not accurately tracking costs.[24]

Available evidence suggests that BellSouth's LEC-CMRS interconnection rates are above cost. In testimony before the Georgia Public Service Commission (GPSC) in 1994, BellSouth's cost witness testified that BellSouth's long-run incremental cost of switching and transporting a call from end-to-end over its own network is 0.98¢ for the first minute

[24] Other aspects of LECs' interconnection rates are clearly unrelated to cost as well. In Georgia, for mobile-to-land traffic interchanged over a Type 1 or Type 2A connection, CMRS carriers have the option of either paying BellSouth a blended rate for termination of calls anywhere in the LATA or paying one rate for calls terminated within the BellSouth local calling area of the interconnection point and a different rate for calls terminated outside the local calling area. The local rate is 2.55¢ per minute. The "toll" rate for calls terminated outside the local calling area, however, is only 2.219¢ per minute, consisting of the sum of the switched access rates for Carrier Common Line (terminating), local switching, and local transport for the 25–50 mile band in BellSouth's intrastate switched access tariff. The blended rate for termination of calls anywhere in the LATA is 2.42¢ per minute. In other words, a Georgia CMRS carrier pays BellSouth *less* for a mobile-to-land call terminated 100 miles from the tandem than it does for a call terminated a block from the tandem.

and 0.24¢ for each minute thereafter.[25] While AirTouch does not have access to precise cost data, a reasonable approximation would be that it costs a LEC approximately half as much, on average, to complete a call interchanged over a Type 2A interconnection as it does to both originate and terminate a call entirely on its own network. Yet for calls terminated over a Type 2A connection, CMRS carriers pay 2.55¢ per minute *for every single minute* — over two and one-half times BellSouth's cost for the first minute of a call carried entirely over its network, and over *ten times* its cost for such a call for each minute thereafter.

The costs of completing a call over a Type 2B interconnection are significantly less than the costs of a call over a Type 2A interconnection because the LEC incurs the costs of tandem switching and of transport from the tandem to the terminating end office in the case of a Type 2A call, but not a 2B call. Even at the lower rate for traffic over a Type 2B interconnection (1.5¢ per minute), for which BellSouth incurs *no* origination switching cost, *no* tandem transport cost, *no* tandem switching cost, and *no* interoffice transport cost, a Georgia CMRS carrier pays over one and one-half times, for the first minute, and over six times, for each subsequent minute, BellSouth's cost of carrying a call from end-to-end over its own network.

One example of the discrimination faced by CMRS providers is the fact that MFS Intelenet of California, Inc. has entered into an interconnection agreement with Pacific Bell in which they will pay each other reciprocal compensation for local traffic at a rate of 0.75¢ per minute. AirTouch Cellular pays far higher rates to interconnect with Pacific Bell and has been denied reciprocal compensation by Pacific Bell.

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[25] See GPSC Docket No. 5258-U, Testimony of Mr. Varner at Transcript p. 1550-53, 1561-62 (Nov. 22, 1994).

4. Intrastate Interconnection Arrangements Between LECs and New Entrants

California, Connecticut, Oregon, and Washington[26] have implemented bill and keep on an interim basis for the interconnection of LECs with competitive local exchange service providers. They have concluded that the benefits of fine tuning interconnection costs are outweighed by the transactions costs and implementation delays that would adversely effect competitive entry. A similar conclusion holds for LEC-CMRS interconnection.

In addition to demonstrating the benefits of bill and keep for LEC-CMRS interconnection, the use of this approach for LEC-CLEC interconnection creates another reason to move to this pricing regime. As noted previously, new local exchange service providers compete with CMRS providers, as well as with incumbent LECs. It is important for the development of wireless competition for local exchange services that CMRS providers not be handicapped relative to their competitors. The continuation of current disparities in interconnection charges pose a significant threat to competitive neutrality. Moreover, because of the nature of the infrastructure costs, CMRS providers are more likely than CLECs to bring the benefits of competition to lower volume end users, such as residential subscribers. In fact, considering the LECs' disregard of the Commission's mandates for cost-based mutual compensation for cellular interconnection and the resulting dozen years of overpayments by cellular carriers, the case for bill and

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[26] See, e.g., *Ex parte* letter from Robert F. Roche, CTIA, to Mr. William F. Caton, Acting Secretary, Federal Communications Commission, February 2, 1996, filed in this proceeding, submitting "State Interconnection Compensation Proceedings Summary."

keep as applied to CMRS-LEC interconnection is even more compelling than for LEC-CLEC interconnection.

5. Measured Local Service Rates

The Commission seeks comment on whether rates that recover the costs of shared facilities whose costs vary in proportion to capacity should be set at some fixed percentage of the measured local service rates that LECs currently charge their local customers. The NPRM sets out two variants of this approach as examples for discussion. There are serious shortcomings with each of these two variants. These shortcomings reflect the deficiencies of the overall approach.

One example is the use of a figure equal to one half of measured local service rates. This calculation would lead to inefficiently and unfairly high interconnection charges. These rates implicitly include the cost of maintaining retail customer relationships, including marketing, customer service, and billing costs. As Pacific Bell noted in its VDT 214 proceeding, it is inappropriate to include the costs of retail customer relationships in the rates for a carrier-to-carrier service.[27] These rates also are too high to the extent that they are based on fully distributed costs, rather than incremental costs.

The Commission recognizes that there may be areas in which there is not a sufficient basis for establishing a local measured service rate. The NPRM thus seeks comment on a method of imputing a per-minute charge from a flat monthly local service charge by dividing the fixed monthly bill by the average number of calling minutes.

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[27] See, e.g., *Ex parte* letter from Alan Ciamporcero, Pacific Bell, to Mr. William F. Caton, Acting Secretary, Federal Communications Commission, March 21, 1995, filed in File Nos. W-P-C 6913, 6914, 6915, and 6916, at p. 10. This point is also made by Ernst & Young in its study of Pacific Bell's filing before the California PUC. This study is discussed further in the attached Appendix A.

While simple, this approach is extremely unlikely to produce cost-based rates. This procedure produces an average cost-based per-minute charge. The costs of providing local exchange services are largely the non-traffic sensitive costs of providing local loop facilities, however. Thus, even if the monthly charge for basic service is set below cost, a per-minute charge at the average price might be significantly larger that the long-run incremental cost of additional calling. Thus, this approach may dramatically overstate the cost of an incremental call. This certainly would be the case for calls during off-peak periods; for these calls the incremental costs are essentially zero.

6. Existing Interconnection Arrangements Between Neighboring LECs

AirTouch does not have access to the terms of these arrangements. However, it is our understanding that neighboring LECs (including independent telephone companies) typically exchange traffic on a bill and keep basis. This is certainly true of EAS traffic. Such arrangements are compelling evidence that, at least when they are exchanging traffic between their non-competing systems, LECs prefer bill and keep because of its administrative simplicity, transaction cost savings, and the fact that each LEC perceives benefits flowing to its customers from such interconnection.

E. CONCLUSION

Bill and keep is the optimal interim policy for LEC-CMRS interconnection. The relevant economic costs of LEC-CMRS interconnection are close to zero. Hence, the costs of interconnection rate development, billing, collection, and audit would likely outweigh the efficiency benefits of exact cost-based pricing. Moreover, there is little potential harm from having bill and keep on an interim basis, while there is significant

potential economic harm if interconnection rates are set too high during this critical period for CMRS industry development. While low interconnection rates provide incentives for carriers to stimulate use of the public switched telephone network, overly high interconnection prices threaten the development of the CMRS industry and wireless local loop competition. Lastly, it will take a significant period of time to develop any detailed, cost-based system. The attendant delay will stifle the development of the wireless industry and all of the attendant benefits.

IV. THE LONG-TERM SOLUTION

The economic principles stated in Section III provide guidance for developing a long-term pricing framework for LEC-CMRS interconnection. This will be a complex and time consuming process, but several important points are clear at the outset.

Long-run incremental costs are the proper measure of interconnection costs. If the Commission elects to implement a cost-based pricing scheme, it must first establish accurate measures of incremental costs. Doing so includes developing a break-down of costs by time of day, as well as an analysis of the pattern of cost causation, such as the degree of traffic sensitivity. The Commission must then determine whether the benefits of developing and maintaining a system that attempts to set rates that closely track the underlying costs is indeed efficient in light of the administrative and transactions costs.

The pricing of LEC-CMRS interconnection must be evaluated within the larger context of pricing LEC facilities and services. LEC-CMRS interconnection is only one of many uses of the local exchange network. To the extent that there are overhead burdens or subsidy needs associated with the local exchange network, these costs should be efficiently and fairly allocated across all users of the network. Moreover, the Commission must take a hard look at subsidy flows to determine which ones serve their intended purpose and assess whether they do so at the least cost to society. In short, it will be impossible to implement an efficient long-run LEC-CMRS interconnection policy

until the Commission and the states undertake comprehensive reform of access charges and universal service.

Development of an appropriate long-term policy will be time consuming. In the interim, it is important to have a policy that does not exacerbate existing distortions in the present system and that will not be an obstacle to the implementation of an appropriate long-term policy. Bill and keep meets these needs. It will allow the development of efficient wireless competition and will not necessitate incurring high levels of administrative costs simply to put in place a short-lived temporary policy.

V. NEGOTIATED CONTRACTS VS. TARIFFS

A. The Benefits of Negotiated Contracts are Recognized in the Telecommunications Act of 1996

As the Commission acknowledges, the overwhelming majority of established cellular carriers, as well as various other wireless providers including some PCS providers, support the use of negotiated contracts for interconnection arrangements with LECs.[28] The benefits include giving carriers greater flexibility to accommodate unique interconnection requirements associated with wireless networks, allowing carriers to respond quickly to technological developments, and reducing administrative costs.

Since the time when the Commission received those comments, Congress has enacted the Telecommunications Act of 1996. In that legislation, Congress expressed a strong preference for the use of negotiated contracts between carriers rather than tariffs.[29] In addition, various states have proceeded to set rules for opening up local markets to competition that use intercarrier contracts rather than tariffs. For example, the California Public Utilities Commission recently adopted interim rules for interconnection between the LECs and new competitive local exchange carriers ("CLCs" or "CLECs") which, among other things, explicitly adopted a negotiation model as the basis for

[28] NPRM, at para. 83.

[29] See, e.g., Sections 251 and 252 of the Telecommunications Act of 1996. Although, as discussed below, those sections do not directly apply to LEC-CMRS interconnection arrangements, they nevertheless demonstrate Congress' support for such contractual relationships.

interconnection.[30] This CPUC decision is supported by a rationale which applies equally to interconnection between LECs and CMRS providers:

> "Allowing competitors to negotiate contracts will have several benefits over tariffs. A more level playing field is created when prospective competitors are able to negotiate their own terms and conditions for interconnection with co-carrier status subject to appropriate Commission rules and guidelines. Contracts will afford LECs and CLCs greater opportunity to negotiate flexible interconnection agreements to meet the needs of both parties. We expect contracts will lead to an overall increase in efficient utilization of the combined CLC and LEC interconnection facilities and, therefore, lead to more economic interconnection than would a more rigid tariff structure. Contracts will allow parties to more readily deploy new technologies as they become available."[31]

In short, the greater flexibility of negotiated contracts coupled with complaint and alternative dispute resolution processes should provide greater benefits at less cost than tariffs. It is important that the Commission specifically enforce a policy which preserves an individual CMRS provider's right to enter into negotiations with a LEC and not be bound to the terms and conditions of interconnection agreed to by other CMRS providers.

B. Confidential Information in Interconnection Contracts Should not be Disclosed

AirTouch understands that the filing of interconnection contracts with the Commission or a State commission enables the regulator to monitor such contracts to ensure that the LEC is not engaging in unfair and discriminatory pricing or establishing

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[30] Decision 95-12-056 dated December 20, 1995 in *Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service / Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service.* "Competing carriers for local exchange service shall use negotiated contracts to establish the terms and conditions of interconnection of their respective networks." (Ordering Paragraph 2) The CPUC went on to require that "each party to an interconnection agreement shall negotiate in good faith." (Ordering Paragraph 6)

[31] Id., at page 14. This policy statement directly contravenes the CPUC's earlier Decision 94-04-085, which had permitted LECs to provide cellular interconnection via tariff. This earlier decision has not been implemented; protests by AirTouch and other wireless carriers to the LECs' proposed tariffs are pending before the CPUC. This inconsistent regulatory treatment demonstrates once again why it is important that the FCC establish national, non-discriminatory rules that promote competition.

discriminatory terms and conditions of interconnection. Moreover, given that LECs typically have CMRS affiliates, it is important that those contracts be filed and closely reviewed and compared to other CMRS providers' interconnection contracts to ensure that LECs are not unfairly advantaging their affiliate.

However, AirTouch believes that it is important that the Commission take steps to protect confidential information contained within the interconnection contracts. Specifically, the identity of the CMRS provider, along with other market-specific information, should be redacted from the copy of the contract on file with the Commission. Information that identifies a carrier, such as the market, the carrier's specific prefixes and numbers and the point-of interface locations, should be not be publicly disclosed. In addition to assisting in identifying a CMRS provider, the broad disclosure of a carrier's numbers could facilitate the perpetration of fraud on that carrier's system, while the point-of-interface location could create a security problem.

The need to require disclosure of interconnection contracts is driven by concerns of discrimination and self-dealing by LECs. These are legitimate concerns which can and should be addressed without compromising a CMRS provider's ability to compete in the marketplace as a result of creative network design and skillful negotiating ability. In summary, so long as the CMRS provider's identity is protected, the filing of interconnection agreements is in the public interest, to the extent that they are available for public inspection and subject to Commission review to guard against any discriminatory interconnection practices by the LECs.

VI. JURISDICTIONAL ISSUES

The Commission has tentatively concluded that it has the authority to implement the regulatory alternatives proposed in the NPRM.[32] It states that Section 332 explicitly preempts state regulation of LEC-CMRS interconnection insofar as such regulation serves to preclude entry of CMRS providers.[33] The Commission also notes that state regulation which precludes reasonable interconnection would be inconsistent with the federal right to interconnection established by Section 332 and prior Commission decisions preempting state regulations that prevent the physical interconnection of LEC and CMRS networks. In particular, it now believes that the inseverability doctrine articulated in the Louisiana PSC decision[34] may warrant preemption of state regulatory authority over LEC-CMRS interconnection, particularly given clear Congressional policy directives regarding the development of a nationwide wireless network. AirTouch agrees with the Commission's conclusions in this regard.

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[32] The NPRM offers three alternative approaches for the implementation policies it proposes to adopt. Under the first alternative, the Commission would establish a federal framework which would govern LEC-CMRS interconnection relating to interstate services and would serve as a non-mandatory guideline for state regulators. The second option would have the Commission adopt a federal policy framework governing LEC-CMRS interconnection arrangements for both interstate and intrastate services, but would give the states some flexibility to implement specific elements of these arrangements. As a third alternative approach, the Commission would establish all parameters governing interstate and intrastate interconnection, leaving the states little or no latitude to develop their own policies.

[33] NPRM at 53-54.

[34] Louisiana Public Service Commission v. FCC, 476 U.S. 355, 373 n.4 (1986).

A. Commission Preemption of State Regulatory Authority Over LEC-CMRS Interconnection is Warranted

The common carrier provisions of the Communications Act establish "a system of dual state and federal regulation over telephone service."[35] Under this system, the Commission retains exclusive jurisdiction over interstate matters pursuant to Section 1 of the Act, while Section 2(b) generally reserves to the states the authority to regulate intrastate communications. These spheres of jurisdiction, the courts have recognized, often overlap because most aspects of telecommunications have both interstate and intrastate components.[36] When this occurs, Louisiana PSC establishes that the Commission may preempt state regulation of an intrastate matter when it is "not possible to separate the interstate and the intrastate components of the asserted FCC regulations"[37] or when state regulation "would negate valid FCC regulatory goals."[38]

The Commission may thus preempt in those cases involving both interstate and intrastate components where (1) preemption is required to protect a valid federal regulatory objective; and (2) the state regulation would negate the Commission's exercise of its lawful authority because, as a practical matter, the interstate and intrastate

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[35] Id. at 360.

[36] See Public Service Comm'n of Maryland v. FCC, 909 F.2d 1510, 1514 (D.C. Cir. 1990); Public Util. Comm'n of Texas v. FCC, 886 F.2d 1325, 1329 (D.C. Cir. 1989).

[37] 476 U.S. at 375 n.4.

[38] California v. FCC, 39 F. 3d 919, 931-933 (9th Cir. 1994).

components of regulation are inseverable.[39] These elements are present in the instant context.

1. Exercise of State Authority Over LEC-CMRS Interconnection Would Impede Valid FCC Regulatory Goals

In enacting amendments to Section 2(b) and 332(c) in the Budget Act, and thereby preempting state jurisdiction over intrastate CMRS rate and entry regulation, Congress announced that the purpose of this new provision was to:

> "foster the growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure."[40]

Congress thus acknowledged that CMRS offerings are inherently interstate -- indeed, national -- in scope, and it charged the Commission with the exclusive responsibility to oversee the rapid deployment of these services. Accordingly, the Commission may properly preempt any action by states that would impede this federal objective.

Congress further expressed the view that it:

> "considers the right to interconnect an important one which the Commission shall seek to promote, since interconnection serves to enhance competition and advance a seamless national network."[41]

Congress thus saw CMRS interconnection with LECs as an essential component to the development of CMRS networks, and it delegated to the Commission the responsibility to

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[39] See Public Service Comm'n of Maryland, supra, 909 F.2d at 1515; see, e.g., Louisiana PSC, 476 U.S. at 375 n.4; California v. FCC, supra, 39 F.3d at 931-933; Texas PUC, supra, 886 F.2d at 1332-34; Illinois Bell Telephone Co. V. FCC, 883 F.2d 104, 113-115 (D.C. Cir. 1989).

[40] H.R. Rep. No. 103-111, 103d Cong., 1st Sess. 260 (1993)("House Report").

[41] Id.

"promote" such interconnection. This is precisely the task the Commission is proposing to undertake in the NPRM, and it is clearly consistent with Congressional intent. Efforts by states to impose a mosaic of disparate intrastate regulatory schemes, in contrast, would just as clearly serve to thwart and impede these Congressional mandates, and thus negate the Commission's proper exercise of its interstate authority.

The recent opinion issued by the United States Court of Appeals for the Ninth Circuit in The People of the State of California v. FCC[42] underscores the applicability of the Louisiana PSC doctrine to the issues presented with respect to LEC-CMRS interconnection. That case involved challenges to the Commission's efforts to promote the availability of interstate Caller ID services. At issue was a Commission order preempting a rule adopted by the California Public Utilities Commission ("CPUC") regarding per line blocking requirements imposed on LECs seeking to introduce the new service. The CPUC argued that the Commission's preemption order was invalid because it failed to demonstrate that the CPUC's rules negated a valid FCC goal. The court disagreed:

> "The FCC's explanation of its decision that the CPUC's per line blocking default rule would impede the development of CPN based services is rational. The FCC is empowered to 'make reasonable assumptions about economic impact based on the evidence currently available.' The FCC can, in determining what regulations will best support the development of CPN [calling party numbers] for interstate calls, make a 'predictive judgment' that its regulations will better serve that goal than would CPUC's default plan."[43]

[42] 1996 U.S. App. LEXIS 1234 (9th Cir. 1996).

[43] 1996 U.S. App. LEXIS 1234, *16.

The Court was persuaded, in part, by the Commission's explanation that the state regulatory regime "thwarts and impedes" the accomplishment of the Commission's valid objectives in promoting the development of interstate CPN-based services.[44] This decision would thus support a Commission determination to preempt state regulation of LEC-CMRS interconnection since the states' exercise of jurisdiction in this area would impede the rapid and efficient deployment of CMRS.

Preemption of state regulatory authority over LEC/SMRS interconnection is also appropriate in furtherance of another legitimate Commission objective — to facilitate competition between wireless and local exchange services. In this regard, the Commission recently initiated a rulemaking proceeding in which, *inter alia*, it proposes to authorize CMRS providers to offer fixed wireless local loop services in direct competition with local exchange carriers.[45] The discussion at Section II. above and comments previously filed in the instant proceeding make clear that the LECs routinely have failed to comply with explicit Commission rules and policies governing LEC-CMRS interconnection.[46] Absent Commission intervention, there is little cause for optimism that the LECs' dismal negotiating record will improve now that they will be faced with additional competition from CMRS providers. Preemption of state LEC-

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[44] Id. at *16-*20.

[45] See, *Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, Notice of Proposed Rule Making*, WT Docket No. 96-6, FCC 96-17 (released January 25, 1996).

[46] See, *NPRM* at 14 ("Most of these parties argue that the Commission's existing mutual compensation policy . . . is not being enforced") ("PCIA asserts that, not only have LECs declined to pay compensation to cellular and paging companies for terminating their traffic, but some LECs have actually imposed originating access charges on those carriers for delivering traffic to them.").